

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BRENT MIDDLETON as Trustee of the
National Financial Systems Management, Inc.
Employee Stock Ownership Plan, et al.,

Plaintiffs,

v.

J. HOYT STEPHENSON,

Defendant, Counterclaimant, and
Third-Party Plaintiff,

v.

BRENT MIDDLETON et al.,

Counterclaim and Third-Party
Defendants.

MEMORANDUM DECISION AND
ORDER DENYING MOTION FOR
RECONSIDERATION

Case No. 2:11-CV-313 TS

Before the Court is Defendant J. Hoyt Stephenson's Rule 59(e) Motion for Reconsideration.¹

The Tenth Circuit has recognized the following grounds as warranting a motion to reconsider under Rule 59(e): "(1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice."² "Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party's position, or the controlling law. . . . It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing."³ Because Defendant has not alleged any grounds adequate for this Court to reconsider the judgment under Rule 59(e), the Court will deny this request. The Court would also note that this decision is supported by the Honorable David Sam's finding in a related case that Defendant Stephenson was domiciled in Utah.⁴

It is therefore

ORDERED that Defendant's Rule 59(e) Motion for Reconsideration (Docket No. 100) is DENIED. It is further

¹Docket No. 100.

²*Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2005) (second alteration to reflect change in Rule 59) (citing *Brumark Corp. v. Samson Res. Corp.*, 57 F.3d 941, 948 (10th Cir. 1995)).

³*Id.*

⁴Memorandum Decision and Order, *Stephenson v. Omni Health & Fitness Club of Mobile, LLC*, No. 1:12-CV-100, (D. Utah Sept. 13, 2012), ECF No. 45.

ORDERED that Third Party Defendants' Motion to Strike (Docket No. 105) is DENIED as moot. It is further

ORDERED that the hearing set in this case for November 20, 2012, is STRICKEN.

DATED September 28, 2012.

BY THE COURT:



TED STEWART
United States District Judge